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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re J.D. and S.J., Persons Coming Under
the Juvenile Court Law.

2d Juv. No. B220020
(Super. Ct. Nos. J-1285445, J-1285446)
(Santa Barbara County)

SANTA BARBARA COUNTY CHILD
WELFARE SERVICES,

Plaintiff and Respondent,

v.

BRANDI C.,

Defendant and Appellant.

Brandi C. (mother) appeals the order of the juvenile court terminating her parental rights to her children, D.J. and S.J., and establishing adoption as a permanent plan. (Welf. & Inst. Code, § 366.26.)¹ The sole issue on appeal is whether Child Welfare Services (CWS) complied with the Indian Child Welfare Act (ICWA) notice requirements. (25 U.S.C. 1901 et seq.; Welf. & Inst. Code, § 224 et seq.; Cal. Rules of Court, rule 5.480 et seq.) We affirm.

¹ All statutory references are to the Welfare and Institutions Code unless otherwise stated.

FACTS

Mother, age 17, was a juvenile court dependent.² Father was also a minor. Mother had been placed in foster care with Katiya J., the paternal grandmother. Mother had a disagreement with grandmother, and absconded from placement, taking D.J and S.J. with her. On June 12, 2008, the children were removed from mother's care due to abuse and neglect. D.J. and S.J. were one year of age and 3 months of age, respectively, at the time they were detained.

In an Indian Child Inquiry attachment to the dependency petition, father indicated possible membership in the "Blackfeet" tribe. Katiya J. stated that "father's maternal great-great-grandfather Golden Porter was a full-blooded member of the Blackfoot tribe." Elsewhere in the form, it was reported that Katiya J. said Golden Porter was a member of the Blackfeet tribe from Oklahoma. He had lived on the reservation and was referred to as "Chief." He later moved to Los Angeles, where he died. CWS noted that the Blackfeet tribe is federally recognized, but the Blackfoot tribe is of Canadian origin, and is not. The report included the paternal great-great-grandmother's birth date, but indicated she had been adopted and her name changed. Mother stated that she had no Native American heritage.

At the detention hearing on June 16, 2008, father requested a paternity test as to both children. He also completed an ICWA-020 form, indicating possible "Blackfoot" Indian heritage. Mother was granted reunification but was unable to meet her case plan goals. On May 28, the juvenile court terminated reunification and set the matter for a section 366.26 hearing. It also made a finding that ICWA did not apply.

In July 2009, father withdrew his request for DNA testing and acknowledged parentage. In August, the juvenile court declared him to be the presumed father of D.J. and S.J. On October 19, the court terminated the parental rights of both parents and selected adoption as the permanent plan.

² Mother turned 18 during the reunification period, and the court terminated her dependency.

Notice to Tribes

On July 1, 2008, prior to father's declaration of parentage, CWS had filed Notices of Child Custody Proceeding for Indian Child (ICWA-030) for D.J. and S.J. The notices contained no information about the children's birthplaces and stated that birth certificates were unavailable. The forms indicated father's possible affiliation with the "Blackfeet Tribe, Blackfeet, Continental U.S. Indian Tribes." Added as a notation was the previously-mentioned data concerning father's ancestry provided by Katiya J. at the detention hearing.

Little information was provided on the ICWA-030 forms regarding father's paternal grandmother, grandfather, or great-grandparents. Both forms indicated that it was unknown whether father had acknowledged parentage or whether there had been a judicial declaration of parentage. Notice was mailed to the Bureau of Indian Affairs (BIA), and the Blackfeet Tribe in Montana. In August 2008, CWS received return receipts of ICWA notification from the BIA and Blackfeet tribe, which it filed with the court. No response letters from the tribe or BIA are included in the appellate record.

Mother appeals the order terminating her parental rights, asserting that the court failed to comply with ICWA notice requirements. Father is not a party to the appeal. Mother asserts that: (1) there was no proof the Blackfeet tribe received notice; (2) CWS failed to include all the information "reasonably available" on the ICWA form; (3) the ICWA notice summarized the information about father's ancestry, but elsewhere on the form indicated that information was unknown; and (4) CWS failed to provide notice to the tribe that paternity had been established.

While the appeal was pending, we granted CWS's motion to augment the record with evidence of ICWA compliance. The augmented record indicated that CWS had requested an ICWA interim status review hearing for February 25, 2010. Notices regarding both children were filed on February 5. The forms contained the birthplaces, birth certificates and stated that the children might be eligible for membership in the Blackfeet tribe of Oklahoma. They also reflected that father had acknowledged parentage of D.J. and S.J. and there had been a judicial declaration to this effect.

The notices indicated that the paternal grandmother (Katiya J.) and great-grandmother (Lorna T.) claimed that the children's great-great-great-grandfather, Golden Porter, was a member of the Blackfoot or Blackfeet tribe from Oklahoma. The notices included the original and adopted name of the paternal great-great-grandmother. Also included were copies of the dependency petitions and the Indian Child Inquiry Attachment, which included the original information provided by Katiya J. at the detention hearing.

Notice was mailed and response letters were received from the following BIA offices: Rocky Mountain in Montana, Southern Plains and Eastern Oklahoma offices in Oklahoma, and the Southern California regional office in Riverside, California. The BIA offices all referred CWS to the Blackfeet tribe. The Eastern Oklahoma region of the BIA stated that there is no federally recognized Blackfeet tribe of Oklahoma, but there is such a tribe in Montana. CWS re-noticed the Blackfeet tribe of Montana and it responded that the children were not eligible for enrollment.

CWS's attempts in January and February 2010 to contact the paternal great-grandmother, Lorna T., were unsuccessful, as were further attempts to contact Katiya J.³ Return receipts and response letters were filed with the court on February 24, 2010, and the interim hearing was continued to March 11. On that date, the juvenile court found that ICWA did not apply.

DISCUSSION

ICWA imposes on the juvenile court and social services agencies an affirmative duty to inquire whether a child subject to a dependency proceeding is or may be an Indian child. (*In re K.M.* (2009) 172 Cal.App.4th 115, 118-119; *In re Desiree F.* (2000) 83 Cal.App.4th 460, 469.) For purposes of ICWA, an "Indian child" is one who is either a "member of an Indian tribe" or is "eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe." (25 U.S.C. § 1903(4).) Proper

³ At the ICWA hearing, counsel for the minors stated that she interviewed Katiya J. at the time of the detention hearing. Katiya stated that she was raised by her grandmother, Lorna T. (the minors' great-grandmother), who is now deceased. Katiya had no relationship with her own mother and knew nothing about her.

notice to tribes enables them to determine whether the child is or may become a member, and to assert their right to intervene in the dependency proceeding. (*In re J.T.* (2007) 154 Cal.App.4th 986, 994; *In re Samuel P.* (2002) 99 Cal.App.4th 1259, 1267.)

The object of tribal notice is to enable a review of tribal records to ascertain a child's status under ICWA. (*In re D.T.* (2003) 113 Cal.App.4th 1449, 1455.) The notice "must contain enough information to be meaningful. [Citation.] The notice must include: if known, (1) the Indian child's name, birthplace, and birth date; (2) the name of the tribe in which the Indian child is enrolled or may be eligible for enrollment; (3) names and addresses of the child's parents, grandparents, great grandparents, and other identifying information; and (4) a copy of the dependency petition. [Citation.] To enable the juvenile court to review whether sufficient information was supplied, [the agency] must file with the court the ICWA notice, return receipts and responses received from the BIA and tribes. [Citation.]" (*In re Francisco W.* (2006) 139 Cal.App.4th 695, 703.)

Mother's argument has been rendered moot because CWS complied with the ICWA notice requirements while the appeal was pending. (See *In re C.D.* (2003) 110 Cal.App.4th 214, 226.) The revised ICWA notices contained all information available to CWS at the time notice was served and substantially complied with the notice requirements set forth in section 224.2.

DISPOSITION

The judgment (order terminating parental rights) is affirmed.

NOT TO BE PUBLISHED.

COFFEE, J.

We concur:

YEGAN, Acting P.J.

PERREN, J.

James E. Herman, Judge
Superior Court County of Santa Barbara

Darelene Azevedo Kelly, under appointment by the Court of Appeal, for
Defendant and Appellant.

Dennis A. Marshall, County Counsel, Toni Lorien, Deputy County
Counsel, for Plaintiff and Respondent.